

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 1:11-cr-014
Also Case No. 1:13-cv-120

-vs- : Chief Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

RICHARD T. BRUNSMAN, JR.,

Defendant.

ORDER

This case is before the Court on Defendant's Motion for Recusal of Chief Judge Susan J. Dlott from considering his pending § 2255 Motion (Doc. No. 58). Pursuant to the Court's referral of this § 2255 case to Magistrate Judge Merz (Doc. No. 44), he has filed a Report and Recommendations (Doc. No. 60) on the recusal motion and, after Objections (Doc. No. 61) and recommitment (Doc. No. 62), a Supplemental Report and Recommendations (Doc. No. 63). The Motion to Recuse is now pending on Defendant's Objections to the Supplemental Report and Recommendations (Doc. No. 65). In his first Report, the Magistrate Judge relied on the reasoning he had given on the recusal issue in his Decision and Order denying Defendant's motion to amend (Doc. No. 55). Defendant also objected to that Decision (Doc. No. 56).

Although a motion to recuse is a pre-trial matter not specifically denominated as dispositive by statute, the Magistrate Judge appropriately dealt with it on a report and recommendations basis because motions to recuse are directed in the first instance to the judge

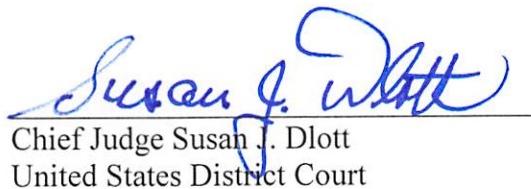
sought to be recused. A motion to amend under Fed. R. Civ. P. 15 is a nondispositive pretrial matter which the Magistrate Judge appropriately decided, rather than recommending a decision. However, because the recusal issue is embedded in the amendment issue, the Court has reviewed both Reports and the Decision and Order *de novo*.

Having conducted that review, the Court overrules Defendant's objections to the Reports and to the Decision and Order on the Motion to Amend. The facts of this Court's handling of the asserted basis for recusal, set forth in the Decision and Order (Doc. No. 55, PageID 469-70) are accurate. The asserted disqualification under 28 U.S.C. § 455(a) is waivable after full disclosure of the facts and Defendant's position that such a waiver must be made by the client and cannot be made by counsel is not supported by authority. And there is no question that Defendant's counsel, Mr. Perry, entered such a waiver on the record.

The asserted basis for disqualification under 28 U.S.C. § 455(b)(1) is also without merit as the facts known to this Court which are relied on as a basis for recusal were learned only in a judicial capacity.

The Magistrate Judge's Decision and Order denying leave to amend is AFFIRMED. Defendant's Objections to the Reports and Recommendations (Doc. Nos. 56, 61, and 65) are OVERRULED and the Motion for Recusal is DENIED.

IT IS SO ORDERED.



Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court